ican court, recognizing these difficulties, has applied a rule of thumb by which the employee may recover from the insurer as great a percentage of his judgment as is given to the other creditors out of the remaining assets of the employer. *Moses* v. *Traveller's Ins. Co.*, 63 N. J. Eq. 260, 49 Atl. 720. See 18 HARV. L. REV. 154; 59 CENT. L. JOUR. 5. Since this involves no greater inconsistency, and reaches practically the same result, it seems preferable.

INTERSTATE COMMERCE — DISCRIMINATION AGAINST SHIP BROKERS — EXCLUSIVE STORAGE FACILITIES ON A CARRIER'S WHARF. — A railroad, which, by owning a wharf connecting with ocean freight carriers was able to issue through bills of lading, granted the exclusive storage facilities on the wharf for "parcel" freight, to a ship broker, but gave equal facilities to all for "full-cargo" shipments. The plaintiff, another ship broker, sues to recover damages for this discrimination. *Held*, that he may not recover. *Gulf, etc. R. Co.* v. *Buddendorff*, 70 So. 704 (Miss.).

Despite the general statutory and common-law prohibitions against discrimination, public carriers have been allowed discretionary power in the assignments of certain of their facilities. *Audenried* v. *Philadelphia & Reading R. Co.*, 68 Pa. St. 370. Thus the grant of exclusive carriage privileges at a station has been upheld by the courts. *Donovan* v. *Pennsylvania Co.*, 199 U. S. 279, 296; *Ex parte Painter*, 2 C. B. (N. S.) 702. And there is considerable authority sustaining a railroad in its assignment of exclusive privileges to an express company. *Express Cases*, 117 U. S. 1, 29; *Atlantic Express Co.* v. *Wilmington, etc. R. Co.*, 111 N. C. 463, 16 S. E. 393. These cases, however, rest in part on the ground that a railroad is a common carrier of freight and not of parcels sent under special supervision. See *Sargent* v. *Boston & Lowell R. Co.*, 115 Mass. 416, 422. The discrimination made in the principal case as to storage facilities for "parcel shipment" only, would seem to be within this reasoning. But the general current of authority is contrary to the argument of the *Express Cases*. *Pickford* v. *Grand Junction R. Co.*, 10 M. & W. 399; *McDuffee* v. *Portland & Rochester R. Co.*, 52 N. H. 430. It would seem as if the true basis of the *Express Cases* must be the public welfare balanced against individual discrimination. See *Sandford* v. *Catawissa, etc. R. Co.*, 24 Pa. St. 378, 382. The extremes between which variation in the right of discrimination is possible seem to have one limit in the cases holding that competing carriers have no right to each other's wharves. *Weems* v. *People's Steamboat Co.*, 214 U. S. 345. The other limit is determined by the cases denying a carrier's right to discriminate between patrons, even though one's business is very large. *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — CONSCIOUS VIOLATION OF A STATUTE AS "WILFUL MISCONDUCT." — An employee was killed by an accident in the course of and arising out of his business while driving an automobile at an illegal rate of speed. The statute refuses compensation if the "wilful misconduct" of the employee was a proximate cause of the accident (1911–1913 CALIFORNIA LAWS, CONSOLIDATED SUPP., p. 1420). Compensation was awarded his widow. *Held*, that the award be set aside. *Fidelity and Deposit Co.* v. *Industrial Accident Commission*, 154 Pac. 834 (Cal.)

In several of the United States recovery under the workmen's compensation acts is refused if the accident is attributable to the "wilful misconduct" of the workman. See 1 BRADBURY'S WORKMAN'S COMPENSATION, 2 ed., 518. If the misconduct contemplated by these statutes is solely a wrong to the employer and his business, it is clear that the mere violation of a statute is not necessarily misconduct, as the employer might have acquiesced in the violation. See

George v. *Glasgow Coal Co.*, [1909] A. C. 123, 129. But if it means negligence from the point of view of the state, the breach of a statute would, by the best authority, be conclusive. See E. R. Thayer, "Private Wrong and Public Action," 27 HARV. L. REV. 317, 321–26. However, in either event, the subjective element of conscious wrong required by the word "wilful" is not necessarily present in every violation of a statute. See TERRY, ANGLO-AMERICAN LAW, §§ 216–17. See *contra*, *Dobson* v. *The United Collieries*, 43 Scot. L. R. 260, 264. For the fiction that everyone always knows the law is of no aid in a search for a subjective reality. But if the workman was aware of the statute and deliberately broke it without sufficient excuse from his employer, his act would necessarily be both "wilful" and "misconduct." *Cf. Great Western Power Co.* v. *Pillsbury*, 149 Pac. 35 (Cal.) In the principal case, as such appear to have been the facts, the decision, under the California law, would seem to be correct. But the problem is further complicated by a question of degree in the various jurisdictions which limit the exception to "serious" as well as "wilful misconduct." *Nickerson's Case*, 218 Mass. 158, 105 N. E. 604; *Casey* v. *Humphries*, 6 B. W. C. C. 520; *Mitchell* v. *Whitton*, 44 Scot. L. R. 955; *Johnson* v. *Marshall, etc. Co.*, [1906] A. C. 409.

POLICE POWER — INTERESTS OF PUBLIC TASTE — BILLBOARD AND BUILDING REGULATIONS. — A statute empowered the Collector of Internal Revenue to remove "any sign, sign board or billboard, displayed or exposed to public view which is offensive to the sight or otherwise a nuisance." PHIL. ACT No. 2339, § 100, subsection 5. A bill was brought to enjoin the enforcement of this statute. *Held*, that it is constitutional. *Churchill* v. *Rafferty*, 14 Phil. Gaz. 383 (Phil. Sup. Ct.).

An ordinance was passed forbidding the erection of unsightly extensions on residence streets without a permit. The plaintiff was refused a permit, and sues to have the decision reviewed. *Held*, that the ordinance is unconstitutional. *Lavery* v. *Board of Commissioners*, 96 Atl. 292 (N. J. Sup. Ct.).

For a discussion of these cases, see NOTES, p. 860.

PROCESS — VALIDITY AND AMENDMENT — MISDIRECTION. — The defendant was properly served by the sheriff of his own county with process directed to the sheriff of another county. *Held*, that the process is voided by the misdirection and cannot be amended so as to validate the judgment obtained on it. *Caldwell* v. *Alexander Seed Co.*, 87 S. E. 843 (Ga. App.).

Some jurisdictions which hold that a defective direction invalidates process, have refused to allow any later amendment of the process return on the theory that since the original process is wholly void there is nothing to amend. *Anthony* v. *Beebe*, 7 Ark. 447; *cf. Strauss Brothers* v. *Owens*, 6 Ga. App. 415, 65 S. E. 161. This reasoning, however, would apply with equal force to defective pleadings which, it is generally conceded, may be amended, unless the amendments would change the cause of action or the defense to the substantial injury of the party opposing it. See PHILLIPS, CODE PLEADING, §§ 312, 313. Now the substantial requirements of process are formal notice of the action to the defendant, by the proper authorities and in due time. Any other elements to a process must be purely matters of form. As such, therefore, they should clearly be open to amendment, and the majority of courts have so held. *Parker* v. *Barker*, 43 N. H. 35; *Chadwick & Co.* v. *Divol*, 12 Vt. 499. See *Mitchell* v. *Long*, 74 Ga. 94, 97; *cf.* 5 PARKS, GA. CODE (1914), § 5709. One court has even decided that there need be no amendment; a process though improperly directed to a sheriff was held valid and binding when served by a constable, or any officer to whom it might properly have been directed. *Hagan* v. *Stuart*, 4 Ky. L. Rep. 834.